

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

vs.

WEXFORD HEALTH SERVICES, INC.,
Defendant.

ORIGINAL

CIVIL NO. 1-CV-00-1525

U.S. District Court Judge Ram

Magistrate Judge Myser

REPLY BRIEF IN OPPOSITION
DEFENDANT'S MOTION TO
REVOKE PLAINTIFF'S INFA
PAUPERIS STATUS

FILED BY MR. JOHN RICHARD
Flintoff and Associates

FILED
HARRISBURG, PA

MAR 30 2001

MARY E. DIANDREA, CLERK
Per gk
Deputy Clerk

MR. JOHN RICHARD JAE
#BQ-9219
SCI-Greene/SMU
175 Progress Drive
Waynesburg, PA 15370-8089

I. STATEMENT OF THE CASE

On or About August 28, 2000, John Richardson, a male State Prisoner confined in the Restricted Housing Unit at the State Correctional Institution At Camp Hill (MSCI-Camp Hill) Camp Hill, Pennsylvania, Initiated this Civil Rights Action by filing a complaint pursuant to 42 U.S.C. § 1983 against Defendant, Wexford Health Services, Inc., a out of the deliberate indifference to Plaintiff's Serious Medical & resulting from the Defendant's failure to repair/replace the Plaintiff's Prescription Glasses which had been broken back in Defendant April, 2000. Plaintiff's Complaint sought, as Relief, compensatory and punitive Damages, & Declaratory Judgment, Plaintiff's Court Costs, Filing Fees, U.S. Marshal Service Fees, Plaintiff's Attorney's Fees & (if any), a trial by jury and such other and further Relief as this Court Deems Just, Proper & Equitable, herein, and Plaintiff also filed Application, seeking leave of Court to proceed in forma pauperis.

In his Application for Leave to Proceed in Forma Pauperis, Plaintiff alleged that he was under imminent danger of serious physical

"Because of the strain and wear and tear on and the deteriorating of my eye vision/eyes, which is shown by the blurred vision, headache, eye pain I am experiencing now and have experienced for the past here and what could amount to irreversible damage on my eyes/visions direct result of defendant's illegal refusal to have my eye glasses and I could go blind from such."

By order dated September 8, 2000, this Court granted Plaintiff to proceed in forma pauperis, herein this case.

On or About November 13, 2000, Defendant, by Counsel, filed motion to revoke Plaintiff's In Forma Pauperis status, herein this case. On November 28, 2000, Defendants, by Counsel, filed their brief in support of Plaintiff's motion to extend time until January 15, 2001.

To file a brief in opposition to Defendants' Motion To Revise Plaintiff's In Forma Pauperis Status and a BRIEF IN OPPOSITION
Defendant's Motion To DISMISS Plaintiff's Complaint.

On January 25, 2001, Plaintiff filed his Second Motion for Enlargement of Time, herein this case, requesting a second enlargement of time until March 25, 2001, in which to file a Reply brief in opposition to the above-referred to Defendant Motions, which U.S. Magistrate Judge J. Andrew Smyser, of this Court, denied on February 2, 2001.

Plaintiff, on or about February 11, 2001, Plaintiff appealed to U.S. District Judge from the illegal February 2, 2001, Order of U.S. Magistrate Judge, denying Plaintiff's Second Motion for Enlargement of Time, and on February 26, 2001, U.S. District Judge Rambo Court entered an Order, reversing the Magistrate Judge's Order of February 2, 2001, and granting Plaintiff leave until March 25, 2001, to file Opposition Briefs and, ordering, that no further extensions will be granted under any circumstances, that the Order of the magistrate judge dated February 12, 2001, is vacated² pending the filing by Plaintiff his opposition brief and further consideration by the magistrate judge, the magistrate judge shall reinstate his order of February 12, 2001, Plaintiff fails to file a timely brief, and the captioned action is referred to Magistrate Judge Smyser.

THIS IS THE PLAINTIFF'S REPLY BRIEF IN OPPOSITION TO DEFENDANT
TO REVERSE PLAINTIFF'S IN FORMA PAUPERIS STATUS, HEREIN THIS CASE

III. STATEMENT OF THE FACTS

II. STATEMENT OF THE FACTS
Sometime around the end of April, 2009, Plaintiff John Richard, who has worn eyeglasses since he was 2 months old, broke his pair of prescription eyeglasses here.
On the second week of May 2009, Plaintiff turned in

around the first or second week of May 2000, Plaintiff's glasses were turned in
eyeglasses into the Prison Corrections Health Care Administrator's office as of February

along with an inmate request to Staff Member Form, requesting she send such eyeglasses out to be repaired.

On June 4, 2000, Plaintiff Jae wrote & sent an Inmate Request to Ms. Law, advising her that I had not yet received my eyeglasses back here yet, that I was being temporarily transferred to the at SCI-Waymart for a mental health evaluation, on June 6, 2000 would she please check & see why my glasses had not been returned to me & then when they got here, to please send such me at SCI-Waymart.

On June 6, 2000, Plaintiff Jae was transferred to the SAU at Waymart.

On June 19, 2000, Plaintiff Jae was temporarily returned back to Camp Hill from the SAU at SCI-Waymart for a Federal court hearing.

It that on June 22, 2000, because he still had not received his glasses back yet, he again wrote and sent another Inmate Request Form to Law and one to Defendant Wexford Health Services, Inc., her complaining about such.

On June 23, 2000, Plaintiff Jae was returned to the SAU at SCI-Waymart.

On July 18, 2000, Plaintiff Jae was permanently transferred back to Hill from the SAU at Waymart.

On July 20, 2000, Plaintiff Jae was seen at Sick Call here by Colleen Newfield & one of the medical problems he complained the blurred vision, headaches & eye pain that he was experiencing having his eyeglasses to wear.

On about July 27, 2000, Plaintiff Jae was again seen here at by P.A. Todd (a name not known) & one of the medical problem complained about was the blurred vision, headaches and eye pain experiencing from not having his eyeglasses to wear.

On about August 2, 2000, Plaintiff Jae was again seen here at Sick Call by the medical problems he complained about was the blurred vision, headache experiencing from not having his eyeglasses to wear.

That, on August 16, 2000, Plaintiff Joe was again seen about by Chief P.A. Colleen Newfield and that one of the medical conditions presented by Plaintiff Joe was the headaches/blurred vision & eye pain that he complained about was the headaches/blurred vision & eye pain that was experienced due to not having his eyeglasses to wear.

On August 16, 2000, Chief P.A. Newfield verbally informed Plaintiff that she had investigated the matter of his eyeglasses & was informed that Defendant Wexford Health Services, Inc., had refused to send the Plaintiff eyeglasses out to be repaired, unless the Plaintiff could pay for such as there was written documentation in Plaintiff's medical chart that during the years, Plaintiff has received seven (7) pairs of replacement eyeglasses.

That, Plaintiff Joe has not received seven (7) pairs of replacement eyeglasses within the past 18 months/ $\frac{1}{2}$ years, but only ~~6~~ pair and one of these was ordered by the eye doctor here due to a change in Plaintiff Joe's Eye prescription & thus such isn't a blatant & bold face lie & such is documented in medical chart here, than some Nurse or Medical Personnel deliberately placed/wrote such information "lie" on my Prison medical falsely and such is suspect and specious.

From July 22, 2000, through August 15, 2000, Plaintiff Joe also complained on numerous occasions to numerous different nurses the headaches/blurred vision & eye pain which he was experiencing & having his eyeglasses to wear.

That, this is not the first time that Defendant Wexford Health Services, Inc., has refused to have Plaintiff Joe's eyeglasses repaired because Plaintiff Joe has no money on his Prison Account to pay for such repairs as the Defendant Wexford Health Services, Inc., issued her/him for over four months here & Defendant Wexford Health Services, Inc., issued her/him for refusing to have Plaintiff's eyeglasses repaired for over four months back then last year here also.

That, the Prison & its Health Care Contractor are legally obligated to pay for Medical Care & Treatment for its prisoners, including, but not limited to:

III - ARGUMENT

- a. PLAINTIFFS IN FORMA PAUPERIS STATUS SHOULD NOT BE REVOKED BECAUSE MORE THAN MORE THAN THREE OF HIS COMPLAINTS HAVE BEEN DEEMED FRIVOLOUS, MALICIOUS OR FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Defendant relies upon and cites a case from the United States Court of Appeals for the Eighth Circuit, in which it was stated, "The Act does not close the courthouse doors to prisoners who frequently file frivolous lawsuits; rather, it merely makes them pay the full ordinary filing fees sooner rather than later." Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998).⁵⁷

By reply to such, the Plaintiff avers & submits that, how the Court was wrong in Ashley, as, if a As Se Plaintiff has money at all in which to pay the full ordinary filing fee up all at once, than the Act most certainly does close the courthouse doors to Indigent & poor plaintiff-prisoners. It makes them pay the full ordinary filing fees sooner or up all at once rather than later, because such causes the Courts to dismiss the As Se Prisoner Plaintiff's Complaint and deny him access to the Federal Courts when he is unable to pay such filing fee upfront all at once & when it cause the Courts to violate their sworn duty to hear federal claims. Ayers v. Morris, 43 F. Supp. 2d 1039 (E.D. Ark. 1999).

Next Defendant claims and argues, that =

In this case, Plaintiff is a frequent filer of frivolous claims.

However, by reply to such, the Plaintiff avers & submits to the he is not a frequent filer of frivolous claims, but rather, he is a rights law violating court system which has violated his ^{rights} & uphold the following Federal Law in his pronouncements.

Defendant also claims, that
Plaintiff's claim

- B- PLAINTIFF WAS UNDER IMMEDIATE DANGER OF SERIOUS PHYSICAL INJURY BOTH AT THE TIME OF THE INCIDENT GIVING RAISE TO HIS COMPLAINT AND AT THE TIME OF THE FILING OF THE COMPLAINT IN THIS CASE AND THUS, HE "DOES" MEET EXCEPTION TO THE THREE STRIKES PROVISION.

In Gibbs v Roman, 116 F.3d 83 (3d Cir. 1997), our Third Circuit, U.S. Court of Appeals, stated & held =

In resolving a contested issue of imminent danger, the district court may rely upon evidence supported by sworn affidavits or depositions, or alternately may hold a hearing. (Gibbs, 116 F.3d at 87).

However, here in this instant case, the defendant has not offered evidence by neither sworn nor unsworn affidavits or deposition thus, it has violated the above holding of the Third Circuit in Gibbs, and, as a consequence, this court may not consider Defendant's Exhibit A nor Exhibit B in its decision in support of Motion to Revoke Plaintiff's In forma Rumpis Status held.

Also, in Gibbs v Roman, 116 F.3d 83 (3d Cir. 1997), our Third Circuit of Appeals, stated & held =

We emphasize that the proper focus when examining an inmate's complaint filed pursuant to 28 U.S.C. § 1915(g) must be the imminent danger faced by the inmate at the time of the alleged incident and not at the time the complaint was filed. (Gibbs, 116 F.3d at 86-87).

Gibbs v Roman was the controlling law & time of incident alleged in the Complaint and also after the filing of the complaint, herein this case, & thus, per the Third Circuit's Gibbs holding(s), as above-
under the Third Circuit's Gibbs holding(s), as above-
the court must examine & decide the present issue of

Defendant claims, that,

Plaintiff's complaint does not allege any facts establishing that he is in imminent danger of serious physical harm.

By reply to this, the Plaintiff avers & submits that, it is true, by law it is not the Plaintiff's complaint which alleges any facts establishing that he is in imminent danger of serious physical injury/harm, but rather, it is Plaintiff's Application For Leave To Proceed In forma pauperis which alleges such facts establishing that he is under imminent danger of serious physical injury/harm & herewith this Plaintiff's Application For Leave To Proceed In forma pauperis "does" allege facts establishing that he was in imminent danger of serious physical injury both at the time of the Plaintiff's alleged in the complaint and also at the time the complaint was filed and thus, Defendant's claim here is not only factually untrue, but such is also contrary to the complaint.

Defendant also claims & argues, that:

In this case, Plaintiff's complaint arises out of the fact that the inmate's prescription lenses were not replaced. It strains credulity to suggest that the failure to replace Plaintiff's eyeglasses placed him in imminent danger of serious physical harm. Consequently, the Honorable Court must revoke Plaintiff's in forma pauperis status as a matter of law.

However, by reply to this the Plaintiff avers & submits that Defendant fails to allege & state how it strains credulity to suggest that the failure to replace Plaintiff's eyeglasses placed him in imminent danger of serious physical harm, of facts alleged as the reason why Plaintiff was under imminent danger of serious physical injury, herein this case, which Defendant,

Furthermore, Plaintiff avers & submits, that the Defendant's claim/argument here is also factually & legally insufficient specious & frivolous because the U.S. Court of Appeals for the Third Circuit, stated & held, INGRISH v. CBOE / 160 F.3d 962 (3d Cir. 1998), that,

Inmates ought to be able to complain about "unsafe, life-threatening condition [B] in their prison" without waiting for something to happen to them. (Gibbs, 160 F.3d at 965),

* * * * *

Thus, we will not read the language of § 1915(e) to require that the "imminent danger" allegation be accompanied by allegations of an existing serious physical injury in order to bring a prisoner within the statutory exception to the "three strikes" provision. It is sufficient that the condition poses an imminent danger of serious physical injury. (Gibbs, 160 F.3d at 967),

and herein in this instant Civil Rights action, this Plaintiff should not have to wait until he suffers so much strain and damage ^{to his eyes} having to go without his eyeglasses which becomes irreversable and he loses his vision as a result before he can file a lawsuit/Civil Rights complaint against the defendant, for illegally denying him his eyeglasses/eye care, and notably absent from Defendants' ^{any other time or authority supporting its argument here, that's because there is} Finally, Plaintiff is anything in this case which strains

Credibility, as it violates the law, re "is" Defendants' claims & arguments of their Motion to Dismiss Plaintiff's Informative and Brief in Support herein.

(w) HEREBY, Plaintiff John Richard JAG, Pray
that this Court will follow & enforce the controlling
Federal Law as it "IS" Required to do and Enter an
Order denying, with prejudice, Defendant's Motion to
Revoke Plaintiff's In Forma Pauperis Status, herein this day.

AND HE SHALL EVER PR
RESPECTFULLY SUBMIT

② ——————
MR. JOHN RICHARD JAG
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SCI-Greene/CMV
175 Progress Drive
Waynesburg, PA. 15370

Plaintiff and Pro Se Cause

Dated: 23rd MARCH 2001

Pae vs. Wexford Health Services, Inc.
CVPI No. 1:CV-00-1534
CERTIFICATE OF SERVICE

I certify that on: 3/23/01, I mailed to the person(s) below, a true & correct carbon copy of each of the Plaintiff's Reply Brief in Opposition to Defendant's Motion to Reconsider Plaintiff's In Forma Pauperis Status and Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, by U.S. 1st Class Mail, Postage Prepaid:

I certify that on: 3/23/01, I gave to prison officials here, originals of each of the above-same documents for mailing to the

I certify under penalty of perjury & pursuant to 28 U.S.C. § 1746 that above, is true & correct:

MR. James D. Young, Esquire
LAVERY, FANTERI, PAUL & PARTNERS, P.C.
Attorneys at Law
P.O. Box 1245
Harrisburg, PA 17108-1245

Dated / Executed On:
23rd MARCH 2001

(S) *John Richard*
MRS. JOHN RICHARD
Plaintiff and Case C